

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JOHNNY EDWARD MCMAHON,

Case No. 3:24-cv-00292-MMD-CSD

Petitioner,

ORDER

v.

STATE OF NEVADA, *et al.*,

Respondents.

Petitioner Johnny Edward McMahon has submitted a *pro se* petition for writ of habeas corpus. (ECF No. 1-2.) He has now paid the filing fee, so his incomplete application to proceed *in forma pauperis* is denied as moot. (ECF No. 1.) The Court has reviewed his petition, and it will be dismissed as second and successive.

“Before a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(3)(A). Where a petition has been dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *See McNabb v. Yates*, 576 F.3d 1028, 1029-30 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

McMahon indicates on the face of his petition that he seeks to challenge his 2008 convictions of several counts of sexual assault of a minor under age sixteen and open and gross lewdness. (ECF No. 1-2 at 12.) He also states that he previously challenged this judgment of conviction in this Court. In September 2017, this Court denied the petition on the merits in its entirety, and judgment was entered. 2:14-cv-00076-APG-CWH. This petition, therefore, is a second or successive habeas corpus petition. *See Henderson*,

1 396 F.3d at 1053. McMahon was required to obtain authorization from the United States
2 Court of Appeals for the Ninth Circuit before he could proceed. See 28 U.S.C. §
3 2244(b)(3). He does not say that he sought leave, and nothing in his almost 200-page
4 filing indicates that he has received such authorization from the court of appeals.

5 The Court accordingly dismisses this petition with prejudice. Reasonable jurists
6 would not find this conclusion to be debatable or wrong, and the Court declines to issue
7 a certificate of appealability.

8 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No.
9 1) is denied as moot.

10 It is further ordered that the petition for writ of habeas corpus is dismissed with
11 prejudice as second and successive.

12 It is further ordered that a certificate of appealability will not issue.

13 It is further ordered that Petitioner's motion to request filing of an amicus curiae
14 brief (ECF No. 4) is denied as moot.

15 The Clerk of Court is directed to enter judgment accordingly and close this case.

16 DATED THIS 18th Day of October 2024.

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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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